

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLEETWOOD INDUSTRIES, INC.;
HERRE BROTHERS, INC.;
HEYCO METALS, INC.;
KIEF INDUSTRIES, INC.;
CHARLES KOENIG WHEEL ALIGNMENT
SERVICE AND GARAGE;
BRIAN R. SCHLAPPICH, INC.;
HUB FABRICATING COMPANY;
KACHEL MOTORS, INC.,

Defendants.

Case No. 00-CV-1818

(Judge Fullam)

AMENDED COMPLAINT

The United States of America ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this amended complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), for injunctive relief and for recovery of more than \$1 million in response costs incurred, as well as future costs to be incurred, by the United States in response to the release or threat of release of hazardous substances at the Berks Landfill Superfund Site ("the Site"), located in Spring Township, Pennsylvania.

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JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9606, 9607(a), and 9613(b).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

GENERAL ALLEGATIONS

A. Description of the Site

4. The Site is located in Spring Township, approximately seven miles southwest of Reading, Pennsylvania.

5. The Site includes two sections of a closed municipal refuse landfill and associated property situated over an area of existing and potential groundwater contamination. The two sections of the landfill are referred to as the eastern landfill, which covers an area of approximately 47 acres, and the western landfill, which covers an area of approximately 19 acres.

6. Waste disposal in the eastern landfill occurred from at least the 1960s. The waste accepted included municipal refuse, demolition debris and industrial waste. Landfilling ceased in September 1986 and the landfill was closed pursuant to a Consent Order issued by the Pennsylvania Department of Environmental Resources.

7. The western landfill operated from the 1960s through the mid-1970s. The western landfill accepted primarily municipal refuse, but may also have been used for disposal of hazardous wastes over time. The western landfill was closed in or around 1980 with a graded, low permeability soil cap.

8. As a result of the waste disposal operations at the Site, hazardous substances have been or are threatened to be released into the environment at or from the Site. These substances include lead, zinc, copper, toluene, TCE, xylene, chlorobenzene, MEK, and benzene.

B. EPA's Response Actions in Connection with the Site

9. On or about October 2, 1989, the Site was listed on the National Priorities List ("NPL") pursuant to 42 U.S.C. § 9605. See 54 Fed. Reg. 41020 (October 2, 1989).

10. EPA has performed a variety of response actions at the Site, including, but not limited to, sampling, investigative and enforcement activities.

11. The United States has incurred more than \$1 million in response costs and will continue to incur response costs in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604. The United States' past and future response costs have been and will be incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

DEFENDANTS

12. Fleetwood Industries, Inc. is a Pennsylvania corporation.

13. Herre Brothers, Inc. is a Pennsylvania corporation.

14. Heyco Metals, Inc. is a Pennsylvania corporation.

15. Kief Industries, Inc. is a Pennsylvania corporation.

16. Charles Koenig Wheel Alignment Service and Garage is a sole proprietorship that was located and operated in Pennsylvania at all times relevant to this Complaint.

17. Brian R. Schlappich, Inc. is a Pennsylvania corporation.

18. Hub Fabricating Company is a Pennsylvania corporation.

19. Kachel Motors, Inc. is a Pennsylvania corporation.

FIRST CLAIM FOR RELIEF

20. The United States realleges and incorporates by reference paragraphs 1 through 19, above, as if fully set forth below.

21. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as amended, provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and continuing such hazardous substances, . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

22. Each of the Defendants is a "person" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

23. Hazardous substances found at the Site, including the substances referred to in paragraph 8 above, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. The hazardous substances found at the Site were released or threatened to be released into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. To protect the public health, welfare and the environment from the actual or threatened release of hazardous substances into the environment at or from the Site, the Administrator of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), has undertaken response actions with respect to the Site that are not inconsistent with the NCP, including but not limited to, enforcement, investigation and other activities in responding to the releases and threats of releases of hazardous substances at or from the Site.

27. Defendants Fleetwood Industries, Herre Brothers, Heyco Metals, Kief Industries, Charles Koenig Wheel Alignment Service and Garage, Brian R. Schlappich, Inc., Hub Fabricating Company, and Kachel Motors, Inc., or their predecessors in interest, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such defendant or predecessor, at the Site.

28. Hazardous substances of a kind similar to the hazardous substances that defendants Fleetwood Industries, Herre Brothers, Heyco Metals, Kief Industries, Charles Koenig Wheel Alignment

Service and Garage, Brian R. Schlappich, Inc., Hub Fabricating Company, and Kachel Motors, Inc., either transported to the Site and/or arranged for treatment or disposal or arranged with a transporter for treatment or disposal at the Site, are now, or at times relevant hereto were, present at the Site and their presence caused the incurrence of response costs.

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Site.

30. The United States is also entitled to a declaratory judgment on Defendants' liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site.

SECOND CLAIM FOR RELIEF

31. The allegations in paragraphs 1-30 of the Complaint are realleged and incorporated herein by reference.

32. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

33. By Executive Order 12580, dated January 23, 1987, the President's authority under Section 106(a) has been delegated to

the Administrator of EPA. The Administrator of EPA has re-delegated her functions under Section 106(a) to the Regional Administrators of EPA, including the Regional Administrator of EPA Region III.

34. The Regional Administrator of EPA, Region III, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at or from the Site.

35. The United States is entitled to injunctive relief requiring Defendants to perform work required to abate the conditions that present or may present an imminent or substantial endangerment to the public health or welfare or the environment, including the work required to implement the Record of Decision for the Site.

REQUEST FOR RELIEF


WHEREFORE, the United States respectfully requests that the Court enter a judgment against Defendants jointly and severally as outlined in the paragraphs below:


1. Award the United States injunctive relief and order Defendants to pay unreimbursed response costs incurred and to be incurred by the United States in conducting response activities, including removal and remedial actions, investigations, planning, oversight, and enforcement at the Site;

2. Enter a declaratory judgment as to Defendants' liability that will be binding in future actions to recover further response costs connected with the cleanup and response actions at the Site;


3. Award the costs of this action to the United States;
and
4. Grant such other and further relief as the Court deems
just and proper.

Respectfully submitted,


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